

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

VICTOR E. MYERS	§	
	§	
VS.	§	CIVIL ACTION NO. G-07-326
	§	
STOLT-NIELSEN TRANSPORTATION	§	
GROUP, INC.	§	

OPINION AND ORDER

Before the Court is the “Defendants’ Opposed Motion to Compel Vocational Evaluation of Plaintiff.” Having carefully considered the Motion and the arguments of counsel presented at a Hearing on April 4, 2008, this Court issues this Opinion and Order.


Plaintiff, Victor E. Myers, brought this maritime action seeking a jury determination that he is entitled to the recovery of damages from the Defendants for, *inter alia*, physical pain, mental anguish and a loss of earning capacity. Myers has, therefore, placed his physical and mental condition in controversy. Fischer v. Coastal Towing, Inc., 168 F.R.D. 199, 201 (E.D. Tx. 1996) In support of his claims, Myers submitted to a vocational-rehabilitation evaluation by Joe Kramberg, a well qualified expert in this field. The Defendants now seek an Order from this Court that Myers submit to a similar evaluation by their well qualified expert, William Quintanilla.

Because Kramberg’s report includes observations made by him about Myers during his interview and testing and Kramberg will offer that testimony to the Jury, the Defendants have shown “good cause” to support their Motion. Unless the evaluation is permitted, the Defendants will have no way to scrutinize the conclusions of Dr. Kramberg. Fischer, 168 F.R.D. at 201

The Court is aware that the presiding Judge, the Honorable Samuel B. Kent, denied an almost identical Motion in a prior civil action, but that action was a non-jury case. Here, there is the ever-present risk that the Jury may discount Quintanilla's testimony because Myers was not seen by him, even though all of the other sources of information relied upon by Kramberg have been made available. Monroe v. Cooper/T. Smith Stevedoring Co., 2000 WL 687196 (M.D. La.) citing Wilks v. Epic Marine, 2003 WL 2227219 (E.D. LA) To avoid prejudice to the Defendants in the upcoming jury trial, the Court is of the opinion that the instant Motion (Instrument no. 25) should be, and it is hereby, **GRANTED**.

It is, therefore, **ORDERED** that Plaintiff, Victor E. Myers, **SHALL**, at the convenience of the Parties and at a time and place of their choosing, submit to a timely vocational-rehabilitation evaluation by William Quintanilla.

DONE at Galveston, Texas, this 4th day of April, 2008.



John R. Froeschner
United States Magistrate Judge